

## REMARKS

In the August 13, 2008 Office Action, the Examiner noted that claims 1-24 were pending in the application; rejected claims 1 and 14 under 35 USC § 102(e); and rejected claims 2-13 and 15-24 under 35 USC § 103(a). In rejecting the claims, U.S. Patents 7,032,222 to Karp et al. and 5,748,892 to Richardson (References A and B, respectively) were cited. Claim 25 has been added and thus, claims 1-25 remain in the case. The rejections are traversed below.

### Rejections under 35 USC § 102(e)

In paragraphs 3-5 on pages 2-3 of the August 13, 2008 Office Action, claims 1 and 14 were rejected under 35 USC § 102(e) as anticipated by Karp et al. Claim 1 recites "restricting, without totally suspending, processing of resource acquisition requests when a number of resources in use is within a first predetermined amount of a maximum number of available resources" (claim 1, last 2 lines). It is submitted that Karp et al. fails to describe all of the features included in this statement.

First, it is submitted that Karp et al. does not disclose doing anything, including "restricting," based on "a number of resources in use" as recited in claim 1. In paragraph 4 of the August 13, 2008 Office Action, it was asserted that Fig. 2 of Karp et al. disclosed "the request [is] selectively restricted if resource use is between the soft limit and the hard limit, i.e. within a first predetermined amount" and that "the hard limit is a resource limit for a single user and would inherently be lower than the maximum number of available resources since there are multiple users" according to column 3, lines 33-43.

Second, it is submitted that Karp et al. does not describe any operation that is based on "a number of resources in use" as required by claim 1. The closest term to "a number of resources in use" found in what has been cited by the Examiner is "the current utilization of the resource" (column 3, line 37). However, there is no mention in column 3, lines 33-43 of Karp et al. that the current utilization of the resource is compared with anything and no mention has been found elsewhere that this value is used to determine any kind of limit or compared with any kind of limit. In fact, the only occurrence of "current utilization" in Karp et al. is in the cited portion of column 3 and no mention has been found elsewhere in Karp et al. that anything like current utilization is used for any purpose.

Instead of performing operations based on "current utilization" (as allegedly taught by Karp et al.) or "a number of resources in use" (as recited in claim 1), Karp et al. describes using "the Total Allocation of the Resource To the User that Would Result if the Request is Granted"

(Fig. 2, block 100) in comparison with various limits. Even if the term "a number of resources in use" referred to what is used by a single user, there still would be no operations performed on the number of resources in use, because Karp et al. clearly teaches that the number of requested resources is added to the number of resources in use prior to performing the tests. Therefore, Karp et al. does not anticipate claim 1.

Furthermore, it is submitted that Karp et al. does not determine when anything is "within a first predetermined amount of a maximum number of available resources" as required by claim 1. Karp et al. describes "a total capacity or capability (T) of the resource" (column 3, lines 3-4) which may be equivalent to "a maximum number of available resources." However, T is used to calculate the "maximum value for the hard limit H [which] is equal to T minus the sum of the soft limits of all potential users" (column 3, lines 38-39). If it is assumed that "the sum of the soft limits of all potential users" is the "first predetermined amount" recited in the claims, then claim 1 would require that something happen when the "hard limit H" is exceeded by some value, so that the value is "within a first predetermined amount of a maximum number of available resources" as required by claim 1. According to block 106 in Fig. 2 of Karp et al., if granting the request would cause the hard limit to be exceeded, then the request is denied in block 108. This would constitute "totally suspending ... processing of resource acquisition requests" (claim 1, line 3) and thus, would not meet the limitations recited in claim 1 as amended. Thus, for this additional reason Karp et al. fails to describe all of the limitations recited in claim 1.

Finally, in the method described in Karp et al., "restricting ... processing of resource acquisition requests" (claim 1, line 3) does not begin when the "Soft Limit [is] Exceeded" in block 102, but rather after the "High Watermark [is] Exceeded" in block 110. Claim 1 recites that "restricting" happens "**when** a number of resources in use is within a first predetermined amount of a maximum number of available resources" (claim 1, lines 3-4, emphasis added) not **after** a soft limit (determined in some other manner) is exceeded which, as noted above, is what is described by Karp et al.

Thus, while Karp et al. describes "restricting ... processing of resource acquisition requests" under certain conditions, the conditions under which processing of resource acquisition requests is restricted is different in Karp et al. than as required by claim 1 and Karp et al. does not anticipate claim 1. Since claim 14 recites "restricting, without totally suspending, processing of resource acquisition requests when a number of resources in use is within a first predetermined amount of a maximum number of available resources" (claim 14, last 2 lines), Karp et al. does not anticipate claim 14 either.

Paragraph 35 in the Response to Arguments on pages 9-10 of the August 13, 2008

Office Action asserted that because

the hard limit is a value below the maximum number of available resources since the hard limit is set per user and the system of Karp has multiple users ..., if resource use falls between the soft and hard limit (i.e. within a first predetermined amount of a maximum number of resources), processing of the resource request is restricted

(Office Action, page 9, last 5 lines). However, as discussed above, a value falling "between the soft and hard limit[s]" would not be "within a first predetermined amount of a maximum number of resources" (claim 1, last line) when the hard limit is less than the maximum number of resources. Rather, to be "**within** a first predetermined amount of a maximum number of resources" (claim 1, last line, emphasis added), the value would have to **exceed** some limit that is a "predetermined amount ... [less than] a maximum number of resources." As discussed above, the "hard limit" does not meet this test, because when the hard limit will be exceeded if the request is granted, the request is denied. Claims 1 and 14 have been amended to recite that "restricting" does not include "totally suspending" processing of requests; therefore, exceeding the hard limit cannot be the condition that causes the restricting recited in the claims.

Furthermore, it is submitted that the "soft limit" used in the method described in Karp et al. is not "a predetermined amount ... [less than] a maximum number of resources" because the "soft limit S is a minimum portion of the resource 10 to which each potential user has guaranteed access" (column 3, lines 18-19) and while it is described as "a tunable parameter of the computer system" (column 3, lines 22-23), no suggestion has been cited or found that it is determined "**when** a number of resources in use is **within** a first predetermined amount of a maximum number of available resources" (e.g., claim 1, lines 3-5, emphasis added). No suggestion of doing anything like subtracting a value from the total capacity or capability (T) of the resource to obtain a value that can be compared with current utilization has been cited or found in Karp et al.

Paragraph 37 in the Response to Arguments on pages 9-10 of the August 13, 2008 Office Action stated that because "Karp clearly teaches a method of *selectively* restricting processing of resource acquisition requests *using a high watermark* when a number of resources in use is within a first predetermine amount of a maximum number of available resources, *such as between a soft and hard limit*" (page 10, lines 14-17) the acknowledged failure of Karp et al. to describe "restricting ... [based on] a number of resources in use" as opposed to "the Total Allocation of the Resource To the User that Would Result if the Request is Granted" as described in Karp et al. is "inapposite to the issue at hand" (Office Action, page 10, line 13).

Applicants do not understand what the Examiner means by the phrase quoted in the preceding paragraph from page 10, line 13 of the August 13, 2008 Office Action, but the words quoted from page 10, lines 14-17 of the August 13, 2008 Office Action state a conclusion that has been refuted above. Furthermore, the quotation from page 10, lines 14-17 of the August 13, 2008 Office Action has replaced what actually is tested in Fig. 2 of Karp et al., i.e., "the Total Allocation of the Resource To the User that Would Result if the Request is Granted," with what is recited in claims 1 and 14, i.e., "a number of resources in use" as recited in claims 1 and 14, without any explanation of why such a substitution is proper.

### **Rejections under 35 USC § 103(a)**

In paragraphs 7-32 on pages 3-9 of the Office Action, claims 2-13 and 15-24 were rejected under 35 USC § 103(a) as unpatentable over Karp et al. in view of Richardson. In rejecting claim 3, column 3, lines 3-4 and 16-17 of Karp et al. were cited as allegedly disclosing a "soft limit" like that recited in the claims. However, the "soft limit" of Karp et al., as indicated by block 102 in Fig. 2, relates to a number of resources "to which each potential user has guaranteed access" (column 3, lines 18-19). As discussed above, this soft limit is not determined based on "a maximum number of available resources" (claim 1, last line).

Nothing has been cited or found in Richardson that suggests modification of Karp et al. to overcome the deficiencies discussed above. Therefore, it is submitted that claims 2-13 and 15-24 patentably distinguish over Karp et al. in view of Richardson for at least the reasons discussed above with respect to claim 1.

### **New Claim**

Claim 25 has been added to recite details of the procedure illustrated in Fig. 2 of the application that are clearly different than the procedure illustrated in Fig. 2 of Karp et al. As discussed above, Fig. 2 of Karp et al. first compares "the Total Allocation of the Resource To the User that Would Result if the Request is Granted" (block 100) with a "Soft Limit" in block 102 and grants the request if the Soft Limit is not exceeded; then compares the same value with a "Hard Limit" in block 106 and denies the request if the Hard Limit is exceeded; and only then compares the value with a "High Watermark" in block 110 and grants the request if not exceeded or denies the request if the High Watermark is exceeded.

Contrary to the sequence illustrated in Fig. 2 of Karp et al., claim 25 first determines "when the number of resources in use is within the first predetermined amount of the maximum number of available resources without using all of the available resources" (claim 25, lines 2-4)

and then "plac[es] a new network resource acquisition request in an execution queue associated with a network filesystem when ... at least a second predetermined number of the resource acquisition requests associated with the network filesystem are being processed" (claim 25, last 4 lines). There is no suggestion in Fig. 2 Karp et al. of executing a resource acquisition request after any kind of limit is exceeded, with or without using "an execution queue" as recited in claim 25. Due to the additional limitations recited therein, it is submitted that claim 25 further patentably distinguishes over Karp et al. with or without the addition of Richardson.

### Summary

It is submitted that the references cited by the Examiner, taken individually or in combination, do not teach or suggest the features of the present claimed invention. Thus, it is submitted that claims 1-25 are in a condition suitable for allowance. Reconsideration of the claims and an early Notice of Allowance are earnestly solicited.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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